

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1702 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GORDHANBHAI PUNJABHAI PATEL

Versus

ISHWARBHAI MANGALBHAI BHOIE

Appearance:

MR RA PATEL for Petitioners

SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 04/02/97

ORAL JUDGEMENT

1. The present petition is filed by the petitioner seeking an order of injunction against the respondent from taking the possession of the land of survey No.411/1 of village Napal, Tal. Anand. From the averments made in the petition it would be quite clear that Tenancy Case No.157/83 was filed by the respondent No.1 against the present petitioners under Section 32 (1) (B) of the Bombay Tenancy & Agricultural Lands Act. The said

Tenancy Case was decided in favour of the respondent No.1 and the said decision in favour of the respondent No.1 was confirmed by this court in Special Civil Application NO. 6546/95 decided on 2nd February, 1996. It seems that thereafter, the respondent No.1 had started execution proceeding to get possession of the said land. When the Mamlatdar started the said execution proceeding, the present applicant had given an application to the Mamlatdar saying that as there was standing crop of the applicant, the possession of the land should not be given, but the said request of the applicant was turned down by the Mamlatdar. Though the applicant approach the higher authorities with the same prayer, the request of the petitioner was turned down, and, therefore, the petitioner has come before this court and in this court the prayers sought by him in prayer clause are running as under :

A. Allow this Special Civil Application ;

B. Restrain the respondent from taking possession of the land in dispute survey No.411/ 1 of village Napal Tal.Anand, by issuing of writ of statutory or any other appropriate writ order or direction, for atleast two months from today.

C. Pending hearing and final disposal of this writ petition, the respondent their servants and agents be restrained from taking possession of the land in question by/ through the Mamlatdar and A LT, Anand as stated in the notice for taking possession on 2-3-1996.

D. Any other and further relief/s which may deemed fit and proper in the interest of natural justice ;

2. It is an admitted fact that before this petition came up for hearing, the possession of the land was given by the Mamlatdar to respondent No.1. Now in view of this admitted fact, the above prayers does not survive.

3. It is the contention of the learned advocate for the applicant that the applicant's standing crop was there when the possession was given and the applicants are not paid the cost of the standing crop by the Mamlatdar. If what is stated by the learned advocate for the applicant happens to be true and correct, then the

applicant will have to approach first Mamlatdar making their claim and seeking a decision of the Mamlatdar on their claim and then to take the proper recourse of law. The learned advocate wants me to allow him to amend his petition by amending prayer clause, but the said request could not be entertained as the said event has taken place after filing of this petition and he will have to initially to go before the Mamlatdar, his claim cannot be entertained directly by this court. Hence, the petition is dismissed with no orders as to costs. Notice is discharged.

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